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REMARKS

Claims 1-28 are pending in this application.

The Examiner has rejected claims 1-6, 13-22 and 26-28 under 35 U.S.C. §
103(a) as being unpatentable over Johnson (U.S. Patent No. 6,591,310 B1, hereinafter
"Johnson") in view of George (U.S. Patent No. 5,657,252, hereinafter "George").
Claims 7-12 and 23-25 are also rejected under 35 U.S.C. § 103(a) as being
unpatentable over Johnson in view of George, in further view of York (U.S. Patent No.
6,505,256 B1, hereinafter "York").

The rejections are traversed without amendment, except to correct a
typographical error in the specification.

Interview Report

Applicants appreciate the Examiner's courtesy in discussing the grounds for
rejection and particularly the Johnson reference. A telephonic interview was held on
July 20, 2005 and lasted about half an hour. The interview began with the Examiner
clarifying that he does not have signing authority, so no binding agreement could be
reached. The Johnson reference was discussed. The Examiner clarified what he
considered to be a removable listening device, by reference to figure 4. The Examiner
pointed out the dotted line labeled "PCI" at the middle of the figure and explained that
he considered the components on a PCI card from the dotted line down to the labels
circle-F and circle-G to be the removable listening device. That is, because a PCI card
is removable from a bus, the Examiner considered it to be a removable listening device
for monitoring a wired communications channel. Applicant responded that the PCI card
is an integral part of the communications channel. Removing the PCI card would not
leave any communications channel to monitor; it would break the communications
channel. The Examiner seemed to find this persuasive.

Applicants also questioned whether the Johnson and George references were in
the same art and whether the Johnson reference was relevant. The Examiner
explained that he considered both references to present the same level of
programming. Applicants made reference to the OSI seven level model and explained
that the Johnson reference is at the bottom or lower levels of the model (e.g. levels 1-2)

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while the George reference is at the top of the model (level 7.) The Examiner asked applicants to provide specific reasoning as to why the programmer in George would not look to Johnson for guidance.

No amendments were proposed and no agreements were reached.

Response to Rejections

Independent claims 1 and 16 contain the limitation:

providing a removable listening device to monitor a wired communications channel between one or more tool hosts and one or more tools

The Examiner relies on Johnson as the primary reference, arguing that Johnson meets this limitation. First, Johnson does not meet the limitation. Second, Johnson is not a reference that one practicing the art depicted in George would consider combining with George. Third, Johnson is not properly relied upon because it is nonanalogous art.

In the limitation quoted above, a wired communications channel is monitored using a *removable listening device*. In the specification, FIGS. 2A, 2C and 2D depict various manners of using a removable listening device to monitor a wired communication channel. *See* [0012].

In contrast, the Examiner would construct a wired communications channel, by reference to Johnson figure 4, as linking a host above the dotted line, through a PCI card below the dotted line, to another off-page device connected through references circle-F and circle-G. At the same time, the Examiner argues that the PCI card below the dotted line is a *removable listening device*.

The PCI card cannot be both a necessary part of the communication channel to be monitored and a removable listening device. In reality, Johnson's PCI card is a necessary and integral part of the host-to-I/O device communication channel. If the Examiner argues that it is a removable listening device, then there is no wired communication channel for it to monitor, because there cannot be any communication between the host and the I/O device when the PCI card is removed. Alternatively, if the card is part of the wired communication channel, it cannot also be a removable listening device. Therefore, the Johnson reference cannot supply all of the element for which the Examiner relies on it.

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The limitation quoted above also includes *one or more tool hosts and one or more tools*. Johnson does not teach, with reference to figure 4, that one or more tool hosts are located above the dotted line or that one are more tools are located below the dotted line. Col. 13 line 35 to col.15 line 32 Instead, Johnson teaches that an operating system input-output driver is split above and below the line. Col. 1, lines 26-55. Therefore, the Johnson reference does not supply the element of a wired communication channel between *one or more tool hosts on one or more tools*.

Second, one skilled in simple encoding/decoding, as depicted in George, would not turn to Johnson for a combination of references. The Examiner explained during our interview that he relies on George, the secondary reference, for motivation to use Johnson. But one addressing the SECS decoding problem presented in George would be engaged in straight-forward encoding/decoding of messages. This is a different level and type of programming than work on split input-output device drivers. Following the OSI seven-level model, George's encoding/decoding of messages is at level 7; Johnson's split input-output device drivers are at level 1-2. A typical definition of the OSI model layers or levels is:

Level	Name	Function
7	application level	Program-to-program communication.
6	presentation level	Manages data representation conversions. For example, the presentation level would be responsible for converting from EBCDIC to ASCII.
5	session level	Responsible for establishing and maintaining communications channels. In practice, this level is often combined with the transport level.
4	transport level	Responsible for end-to-end integrity of data transmission.
3	network level	Routes data from one node to another.
2	data link level	Responsible for physical passing data from one node to another.

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| 1 | physical level | Manages putting the data onto the network media and taking the data off. |

This patent application gives SECS and HL7-compliant installations as examples of environments in which the claimed technology would be useful. Looking to the 1999 Health Level 7 standard, we find direct support for classifying message encoding and decoding at level 7: "The term 'Level 7' refers to the highest level of the Open System Interconnection (OSI) model of the International Organization for Standardization (ISO)." Health Level Seven, Version 2.3.1, at §1.2 p. 1-2 (Final Standard May 1999) (accessible at www.hl7.org).

Johnson describes a split level driver to connect an operating system with the physical media of an I/O device. Col. 1. SCSI and Fibre Channel are two interconnect standards referenced for handling I/O requests, at cols. 3-4. Other suitable I/O busses are identified in col. 6, lines 34-48. Referring to the OSI model, Johnson is properly classified at level 1 or 2.

Different personnel with different experience and different skill sets work on level 7 encoding/decoding or translation programs than work on I/O driver architectures. An application level developer working on level 7 encoding/decoding would not be motivated to review patents covering level 1 I/O driver architectures, because the arts are nonanalogous. See MPEP § 2141.01(a), at 2100-122 et seq. The application level developer would not have experience writing I/O drivers and would be working in a higher level programming language or at least with higher level function libraries (supposing, for argument, that C++ might be used for both high and low level programming.) The experience, skills and algorithms used for encoding/decoding and for I/O drivers are unrelated to each other (except in the loose sense that patent attorneys in chemical and electrical arts both communicate in English with PTO Examiners.)

The combination of George and Johnson, based as the Examiner explained on motivation found in the secondary reference George, cannot satisfy the standard of *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references) and MPEP §§ 2141.01(a)

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& 2143.01. However motivated a George-like technologist might be, he would not look to a nonanalogous art that presents little or no likelihood of solving the problem at hand.
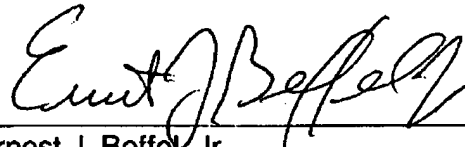
Third, split input-output driver art, represented by Johnson, is nonanalogous art, on which the Examiner is not entitled to rely. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In both *In re Oetiker* and *In re Clay*, the Federal Circuit reversed rejections by the examiner and Board of Appeals because the rejections were based on nonanalogous art. Johnson is not in the field of applicants' endeavor and is not reasonably pertinent, as it does not include the claimed limitation. That is, Johnson is not properly applied because it is nonanalogous art.

For these reasons, independent claims 1 and 16 should be allowable over the cited art. The dependent claims should be allowable for at least the same reasons as the independent claims.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these remarks. The undersigned can normally be reached between 8:30 a.m. and 5:30 p.m. PST, Monday through Friday, at (650) 712-0340, and at cell phone number (415) 902-6112 most other times.

Respectfully submitted,

Dated: 21 July 2005

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